IP 05-0052-CR 1 T/F USA v Cannon [5]
Judge John D. Tinder Signed on 11/14/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

USA,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
CANNON, MAURICE,	)	CAUSE NO. IP05-0052-CR-01-T/F
	)	
Defendant.	)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	IP 05-52-CR-01 T/F
	)	
MAURICE CANNON,	)	
	)	
Defendant.	)	

ENTRY ON MOTIONS FILED OCTOBER 30, 2006 (DOC. NOS. 129 & 130)[1]

Defendant, Maurice Cannon, is charged in the Indictment with possession of a firearm as a felon in violation of 18 U.S.C. § 922(g)(1). On October 30, 2006, Defendant, pro se, filed two motions: "Defendant's Motion for New Suppression Hearing, Enlighten [sic] of New Evidence" and "Request for Production of Original Transcripts and Notes/And Audio Tapes of Hearings/And Original in color photographs." The government has responded. The court decides as follows.

Motion for New Suppression Hearing

Defendant seeks a new suppression hearing. (A full-blown suppression hearing was held over the course of two days in March 2006.) In support of his motion, he states: (1) the officer that made the original arrest, Indianapolis Police Officer Shannon Harmon, was subpoenaed but did not appear at the suppression hearing; (2) a defense

[1] This Entry is a matter of public record and will be made available on the court's web site. However, the discussion contained herein is not sufficiently novel to justify commercial publication.

witness, Anthony Bradshaw, was incarcerated at the time of the suppression hearing and was never transported to the hearing to testify; (3) the radio dispatch the government alleges was destroyed has resurfaced and is critical to the defense; (4) the last defense attorney, Theodore Minch, has admitted in a letter and in open court to being ineffective in litigating defense arguments and Defendant and Mr. Minch were in "total disagreement" over the handling of the suppression hearing; (5) Defendant has new documents that will prove the officers involved in this case have acted with a total disregard for the truth, have been dishonest about the events of December 8, 2004, and have destroyed evidence; (6) Defendant would like to be heard by the court and his voice was blocked from the court by his previous attorneys; (7) the government abandoned its response argument at the suppression hearing leaving Defendant unable to properly prepare for argument.

As an initial matter, Defendant's motion was filed well beyond the deadline for filing pretrial motions. On November 3, 2005, the court set December 1, 2005, as the deadline for filing all motions and notices referred to in Rules 12, 12.1, and 12.2 of the Federal Rules of Criminal Procedure (which would include a motion to suppress evidence). The court twice extended this deadline. Theodore Minch entered an appearance as defense counsel and requested that the deadlines be vacated to allow him time to consult with Defendant and prepare a defense. On December 2, 2005, the court held a hearing and extended the motions deadline to January 30, 2005. On Defendant's motion, the court again extended the deadline for the Defendant to file pretrial motions, this time until February 21, 2006. Six motions were filed, including a

detailed motion to suppress evidence. No further enlargement of this deadline was sought by Defendant, or granted by the court. The motion under consideration was filed on October 30, 2006—more than ten months after the expiration of Defendant's deadline for filing pretrial motions. The motion is out of time and the court is well within its discretion to enforce the deadline. The fact that Defendant now proceeds pro se is not by itself a good enough reason to reopen the deadline. The case is fast approaching the brink of trial yet again, and Defendant's strategy appears to be one of delay.

More importantly, none of the specific reasons advanced by Defendant warrant a new suppression hearing anyway. "Evidentiary hearings on motions to suppress are not granted as a matter of course but are held only when the defendant alleges sufficient facts which if proven would justify relief." *United States v. Coleman*, 149 F.3d 674, 677 (7th Cir. 1998). "Evidentiary hearings are warranted only when the allegations and moving papers are sufficiently definite, specific and non-conjectural and detailed enough to enable the court to conclude that a substantial claim is presented and that there are disputed issues of material fact which will affect the outcome of the motion." *Id.*; *see also United States v. Juarez*, 454 F.3d 717, 719-20 (7th Cir. 2006) (applying same standard and holding evidentiary hearing not warranted); *United States v. Villegas*, 388 F.3d 317, 324 (7th Cir. 2004) (same).

The court's record does not contain anything to support the Defendant's assertion that Officer Shannon Harmon was ever subpoenaed to a hearing, such as a return of service on a subpoena. Moreover, Defendant fails to suggest what facts this

officer would have provided had he testified that would have affected the outcome of the defense suppression motions. The court held an extensive suppression hearing on the defense motions to suppress over the course of two days, March 16, 2006, and March 20, 2006. The court heard evidence and oral argument, and the matters were briefed by the parties prior to the hearing. The government called five witnesses and the defense called two, including Mr. Cannon himself. The witnesses were examined by counsel for both parties. The matters raised by the two suppression motions were adequately addressed at the hearing, and the relevant evidence was detailed in the court's entries on the suppression motions.

As for the allegation concerning Mr. Bradshaw, neither Defendant nor the government made a request for a writ of habeas corpus ad testificandum or other request, including in any ex parte communication, to produce this alleged incarcerated person at the suppression hearing. Again, the Defendant fails to explain what testimony Mr. Bradshaw would offer and how that testimony would change the facts already found by the court. He has not even presented a statement from Mr. Bradshaw, sworn or otherwise.

The matter of the radio dispatch communication was taken up in great detail at the suppression hearing. Mr. Cannon offers nothing to suggest there is anything to be gained from revisiting this matter again. His conclusions that a tape has "resurfaced" and is a "critical part" of the defense are not supported by any facts.

Defendant claims Mr. Minch was ineffective as counsel, but does not explain how. Mr. Minch filed a host of motions on behalf of Defendant, including a request for production by a non-party, a motion to produce evidence, a motion to compel discovery of audio transcript of radio and dispatch communications, a motion for leave to take the deposition of Officer Robert V. Carrier of the Indianapolis Police Department, two motions to dismiss, and two motions to suppress evidence, as well as motions to vacate and extend deadlines and motions for hearings on other motions. In addition to filing these motions, Mr. Minch presented evidence through direct and cross-examination and vigorously argued the motions. From the court's own observation Mr. Minch appeared to give Defendant effective assistance counsel. Defendant has not shown how anything that Mr. Minch did or did not do adversely affected the outcome of the suppression motions or requires yet another suppression hearing. At best, it appears that the Defendant has disagreed with strategic choices made by his prior counsel. That is not a showing of ineffectiveness of counsel.

Defendant also claims to have new documents that will show the officers' alleged total disregard for the truth, but he offers no hint as to what the documents might be or what they might reveal. Mr. Cannon's unsupported, conclusory assertion that he has such documents and that they will establish what he opaquely claims is not sufficient to carry the day either.

Regarding the allegation that his voice was blocked, again Defendant does not even hint at what he would have said had his voice not been blocked as he claims. Anyway, Defendant did testify at the suppression hearing on March 20, 2006, so his

voice was not blocked from the court then.[2] If he is hinting that he had additional testimony to give, he has failed to demonstrate what that testimony is or how it would change the result. Nor has he shown why that testimony could not have been given at the scheduled hearing. On the other hand, if he is suggesting that he now has different and better legal arguments to make, he has not shown how they are different and better and why they were not made at the hearing. As for the argument that the government abandoned his response argument at the suppression hearing leaving him unable to prepare properly, the court is unable to make any sense out of this contention whatsoever.

In short, Defendant Cannon has not articulated what facts he expects to develop at an evidentiary hearing; nor has he identified any disputed issues of material fact that would require suppression of any evidence. Instead, it seems that his motion for new suppression hearing is nothing more than an effort to get to repeat what the learned counsel who previously represented him have already done. The mere fact that the Defendant is now representing himself and he thinks he can have more success than his prior counsel had does not justify another suppression hearing. The Defendant's choice of self-representation does not entitle him to a "do over" of prior proceedings. Thus, Defendant has not carried his burden to warrant a suppression hearing, much

[2] Of course, it is noteworthy that the Defendant's testimony at the March 20th hearing was in sharp conflict with testimony that he had previously given at a January 30, 2006 hearing. It also conflicted with eyewitness testimony from Indianapolis Police Officer Carrier that the court found credible.

less a successive suppression hearing. Accordingly, Defendant's Motion for New Suppression Hearing (Doc. No. 129) is **DENIED**.

Request for Production of Audio Tapes

Defendant asks the court to order the court reporter to file and make available to Defendant any and all audio tapes as well as any original transcripts for every hearing held in open court in this case.[3] He particularly requests the original transcripts and audio tapes of the hearings held on March 16 and 20, 2006. Defendant contends that the transcripts given him are inaccurate, as some officers' and expert witnesses' testimony was omitted in certain areas and misquoted in others. He also claims that the transcripts "contain quotation marks, customizing the transcripts to reflect the government theory of the case." (Mot. ¶ 3.) Defendants seeks correction of the alleged errors in the transcripts and requests the court to record by audio tape all remaining proceedings, including trial.

The motion cites Rules 1001(3) and (4), presumably of the Federal Rules of Evidence; Federal Rule 10(c), presumably of the Federal Rules of Criminal Procedure; and Rule 30(b)(4), presumably of the Federal Rules of Civil Procedure. There is no rule 30 in the Federal Rules of Evidence and Rule 30 of the Federal Rules of Criminal Procedure applies to jury instructions. Rules of civil procedure are generally

[3] He also sought color copies of the original photographs taken at the alleged scene. (Mot. ¶ 8.) The Clerk already has provided him with these. (Letter from Deputy Clerk to Maurice Cannon, dated November 3, 2006.)

inapplicable in this criminal case, and none of the other rules cited support Defendant's requested relief.

In *Smith v. U.S. District Court Officers*, 203 F.3d 440 (7th Cir. 2000), the plaintiff, who had been convicted of a drug crime, sought copies of audiotapes of all the proceedings in his case, claiming the transcripts were inaccurate. The court held that the plaintiff had a right of access to the audiotapes that were the original record of a part of the proceedings against him. *Id.* at 442. However, the court further held that as to the audiotapes that merely backed up the court reporter's stenographic record, the tapes would not be considered judicial records "unless some reason is shown to distrust the accuracy of the stenographic transcript." *Id.*

Here, audiotapes are not the records of the particular proceedings in question; the proceedings of March 16 and 20, 2006 about which Defendant comments were taken through stenographic means by an official court reporter. The official reporter's transcripts have been filed with the court and each contains the reporter's certificate. These were prepared in compliance with the Court Reporter Act and the related regulations. 28 U.S.C. § 753. If audiotapes of the hearings in question exist at all,[4] such tapes would be, at best, a back up for the court reporter's stenographic record and are not part of the judicial record. The Defendant's allegations of inaccuracies in the

[4] The court is unaware of whether there are audio recordings of the hearings. The courtroom in which the hearings were conducted is not wired for sound recording and it is this court's practice to use stenographic reporting at virtually all hearings. Matters before the Magistrate Judges in this district are sound recorded, but those are not the hearings the Defendant is commenting about.

transcripts are merely conclusory. He does not provide the court with even an inkling as to what specific portion(s) of the transcripts are inaccurate, omitted, or misquoted. He suggests that the transcripts were "customized" to reflect the government's theory of the case, but does not offer any explanation of what he means by this, nor does he cite any example from a transcript. Furthermore, the undersigned presided at the proceedings in question. The transcripts do not conflict with the evidence and arguments as the court heard them and the transcripts do not conflict with the findings reached by the court. Defendant simply has made an insufficient showing of any reason to distrust the accuracy of the transcripts so as to require access to the audiotapes that back up those transcripts. He has done nothing to upset the prima facie correctness of the reporter's transcripts. 28 U.S.C. § 753(b). Moreover, he has not made a sufficient showing to require that the original record of all future proceedings in this cause be taken on audiotapes.[5] Accordingly, the request for audiotapes is **DENIED** and all future proceedings in the district court will continue to be taken by stenographic transcription.

Conclusion

For the reasons stated, "Defendant's Motion for New Suppression Hearing, Enlighten [sic] of New Evidence" (Doc. No. 129) and Defendant's "Request for

[5] The Defendant asserts that audio taping is more reliable than stenographic transcription. Although he has been in a few courtrooms during his compilation of the criminal history which is a part of the allegations of the offense charged in the Indictment, he is a novice at evaluating the accuracy of the reporting of judicial proceedings. His unsupported assertions would surprise many courts, including the Indiana Supreme Court which requires that all capital cases be taken by stenographic reporting with computer-aided transcription, just as is done in this district. *See* Rule 24(d) of the Indiana Rules of Criminal Procedure. It is this court's experience that stenographic transcription is at least as accurate as transcription from audiotapes, if not superior.

Production of Original Transcripts and Notes/And Audio Tapes of Hearings/And Original in Color Photographs" (Doc. No. 130) are both **DENIED**.

The court will rule on the other pending motions in another entry in due course.

ALL OF WHICH IS ENTERED this 14th day of November 2006.

John Daniel Tinder, Judge
United States District Court

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